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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 STEVEN LIVADITIS,

12 Petitioner,

13 v.

14 ROBERT K. WONG, Warden,
15 California State Prison at San
Quentin,

16 Respondent.
17

CASE NO. CV 96-2833 RMT

DEATH PENALTY CASE

PROTECTIVE ORDER

18 After considering the parties' arguments and proposed orders, the Court
19 enters the following protective order:

20 All information that is subject to the attorney-client and/or work product
21 privileges, including but not limited to materials in trial counsel's file, and the
22 deposition transcript of trial counsel and/or petitioner, produced during the course
23 of the litigation of this matter, including claims of ineffective assistance of counsel,
24 shall be subject to the following protection:

25 1. Said materials may be used by respondent for the sole purpose of
26 litigating the instant federal habeas corpus case, and may not be used against
27 petitioner for any other purpose, specifically including any criminal retrial that
28 might occur;

1 2. Respondent shall not disclose any of the materials or their contents to
2 any person or entity outside of the California Department of Justice, excluding any
3 expert consultants/witnesses retained by a party for the express purpose of assisting
4 in the resolution and adjudication of the claim or claims, the assertion of which
5 compelled the limited waiver in the first place. Respondent shall not disclose any
6 protected materials or their contents to any other person or entity, including law
7 enforcement personnel not employed by the California Department of Justice,
8 without the express permission of counsel for petitioner or an order from this
9 Court;

10 3. Material covered by this protective order will be filed under seal, and
11 the courtroom will be closed to the public for any portion of the evidentiary
12 hearing that would disclose material covered by the protective order.


13 4. When the Court rules on petitioner's habeas claims, it must balance
14 petitioner's needs to maintain the confidentiality of privileged material against the
15 public's right of access to the courts. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
16 F.3d 1122, 1135 (9th Cir. 2003) (noting "the strong presumption in favor of access
17 to court records"); *see also Kamakana v. City & County of Honolulu*, 447 F.3d
18 1172, 1178 (9th Cir. 2006) (mentioning the right of access the public has to inspect
19 judicial records and documents). While the public's common law right of access
20 "can be overridden given sufficiently compelling reasons for doing so," *Foltz*, 447
21 at 1135, the Court must take "the public interest in understanding the judicial
22 process," *id.* (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995),
23 into account when issuing dispositive orders. *Kamakana*, 447 F.3d at 1179–80
24 (discussing the different operation of the public right of access to dispositive
25 motions and related materials as compared to non-dispositive materials). The
26 Court must explain its reasons publicly when it rules on petitioner's federal habeas
27 petition. *See Kamakana*, 447 F.3d at 1178 ("[T]he strong presumption of access to
28 judicial records applies fully to dispositive pleadings . . ."). In doing so, the Court

1 will not disclose confidential material unnecessarily. *Cf. Anderson v. Calderon*,
2 232 F.3d 1052 (9th Cir. 2000) (declining to quote from record of sealed hearing),
3 *overruled on other grounds by Bittaker v. Woodford*, 331 F.3d 715, 728 (9th Cir.
4 2003) (en banc). At this stage, however, it is impossible to estimate the extent to
5 which the Court will need to discuss privileged material in future orders. The
6 Court will give the parties an opportunity to be heard before issuing orders that
7 publicly discuss material falling within this protective order.

8 5. This order shall continue in effect after the conclusion of these habeas
9 corpus proceedings and specifically shall apply in the event of a retrial of all or any
10 portions of petitioner's underlying criminal case in Los Angeles County Superior
11 Court case number A095327. Any modification or vacation of this order shall only
12 be made upon notice to and an opportunity to be heard from both parties.

13 IT IS SO ORDERED.

14 Dated: July 15, 2009.

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16 ROBERT M. TAKASUGI
17 United States District Judge
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